

Spolia in Roman Cities of the Late Empire: Legislative Rationales and Architectural Reuse

JOSEPH ALCHERMES

One of the most striking and widespread features of the late classical cityscape was the mounting presence of what today are usually called *spolia*—the reused remains of earlier imperial monuments—in towns all over the Roman world. Spoliation, defined in this study both as the integral adaptation of buildings and as the reuse of construction materials salvaged from structures for erection elsewhere, was widely practiced in late antique cities. A substantial body of legislation provides clear evidence that late imperial lawgivers were aware of and wished to regulate the practice of reuse. Analysis of the specific language of these laws, which has not received due attention, sheds light on the concerns of city dwellers and administrators in the fourth and fifth centuries, and broadens our picture of late antique urbanistic strategies and goals.

The Latin word *spolia*, with its negative connotations of pillage and booty, has only recently come to designate reused buildings or their components.¹ The rulers and residents of the cities of the Late Empire did not employ the word in this sense. In the imperial laws that are the principal object of this study, as well as in all other texts of the Republic and Empire, the noun *spolia* never refers to architectural reuse. *Spoliata(e)*, the related participle, appears just twice in the legislation.² Only in the sixteenth century was the Italian cognate, *spoglie*, used for the first time to describe the high imperial sculptures and architectural members reused by fourth-century builders to decorate the Roman arch celebrating Constantine's triumph over his rival Maxentius.³ For Giorgio

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¹According to the Oxford Latin Dictionary, *spolium* is properly the hide or fleece stripped from the body of an animal; transferred, and usually in the plural, it can refer to arms stripped from an enemy, and more broadly, to anything acquired by violence.

²The participle appears first in the phrase *civitate spoliata* ("stripped city") used by the framers of a law of 321 preserved in the Codex Iustinianus (CI 8.10.6, p. 334); a law of A.D. 376 incorporated in the Theodosian Code (CTh 15.1.19, p. 805) instead censures *spoliatae aedes*, "denuded buildings." See also the English translation and commentary by C. Pharr, *The Theodosian Code* (Princeton, 1952). All translations are my own.

The authors of ancient legal texts preferred phrases without the negative associations of *spolia*: the words *rediviva saxa* ("reborn" or "renewed" stones) appear in the same constitution of the Theodosian Code cited above. The very similar *lapis redivivus* and the substantive *rediviva* were used in legal documents of the time of Cicero (Cic., *Actio secunda in C. Verrem*, liber primus 147–48).

³Giorgio Vasari, *Le vite dei più eccellenti pittori scultori ed architetti scritte da Giorgio Vasari*, Proemio, annot. G. Milanese, I (Florence, 1878), 224. It should be noted that Vasari's reaction to the practice was favorable, since

Vasari, *spoglie* had connotations distinct both from the standard Latin sense of *spolia* and from the modern meaning imposed on the Latin word by historians of Roman art. Vasari's language conjures the pathetic image of forlorn remains, while the modern usage unites the disparate ideas of ruin and booty. Fourth-century phrases such as *civitate spoliata* and *spoliatae aedes* confer the pathos not on the disjointed remains themselves, but on the sites from which they had been stripped, the denuded cities and buildings that were so repugnant to the legislators.

The current usage of the word *spolia*, like much of the language favored by modern authors on the subject of reused building materials in the late Roman world, usually bespeaks a distaste for, or at best an uneasy acceptance of, the practice of reuse so frequently attested by the archaeological and literary evidence. A half century ago, Berenson's essay on the Arch of Constantine offered an extremely unfavorable assessment of late antique spoliation and reuse, and the dim view of *spolia* proposed in that study has been shared by many subsequent authors.⁴ Deichmann, for example, in his 1975 monograph on reuse and late antique architectural practice, still emphasized the negative factors, mainly growing economic weakness, that fostered the use of *spolia*.⁵ Other scholars, such as Esch, Krautheimer, Ward-Perkins, Brenk, and Greenhalgh, have evaluated the positive aesthetic, ideological, and even economic potential of *spolia*.⁶

Modern scholarship typically proposes an image of often unprincipled architectural scavengers preying on the ruins of half-destroyed cities; this view is confirmed by the prescriptions of much late imperial legislation. But the large body of late laws regarding public building manifests other concerns as well, which are expressed in and are clarified by the surviving fragments of earlier legislation on reuse in private contexts. Together these texts preserve the outlines of a policy of architectural conservation by which the imperial authorities hoped to maintain not only the monuments of the past, but also the civic spirit that helped to produce them.

The richest collection of laws on public construction and reuse is found in the late imperial code of Theodosius II. It contains a section titled "On Public Buildings," which gathers a century of legislation on the subject issued under Christian emperors from the 320s through the 420s.⁷ Many of these imperial pronouncements make reference to

he found high imperial art, even in reuse, much more satisfying than the creations of the early fourth century. Laura Corti has kindly pointed out to me that Vasari uses *spoglie* and *spogliare* in this sense elsewhere in the *Proemio* (ibid., 230, 231–32), as well as in the *vitae* of Arnolfo (ibid., 275–76), Giovanni Pisano (ibid., 293–94), and Spinello Aretino (ibid., 680).

⁴B. Berenson, *The Arch of Constantine, or the Decline of Form* (New York, 1954), 13–14. The essay was completed in 1941, but not published in English until 1954.

⁵F. W. Deichmann, "Die Spolien in der spätantiken Architektur," SBMünch, Heft 6 (1975), 95.

⁶A. Esch, "Zur Wiederverwendung antiker Baustücke und Skulpturen im mittelalterlichen Italien," *Archiv für Kulturgeschichte* 51 (1969), 1–33; R. Krautheimer, "The Architecture of Sixtus III: A Fifth-Century Renaissance?" in *De Artibus Opuscula XL, Essays in Honor of Erwin Panofsky*, ed. M. Meiss (New York, 1961), 291–302; B. Ward-Perkins, *From Classical Antiquity to the Middle Ages: Urban Public Building in Northern and Central Italy, A.D. 300–850* (Oxford, 1984), hereafter cited as *Classical Antiquity*; B. Brenk, "Spolia from Constantine to Charlemagne: Aesthetics versus Ideology," *DOP* 41 (1987), 103–9; M. Greenhalgh, *The Survival of Roman Antiquities in the Middle Ages* (London, 1989).

⁷*CTH* 15.1 ("De operibus publicis") comprises 53 constitutions on public works. Y. Janvier provided a French translation and partial commentary on this legislation: *La législation du bas-empire romain sur les édifices publics* (Aix-en-Provence, 1969), hereafter cited as Janvier, *Législation*.

spoliation, most often in an attempt to control the activity. This regulatory concern of the lawgivers has monopolized the interest of scholars. The late imperial laws have usually been cited as evidence for the deepening decline of cities and for the growing inability of local authorities to stem the decay and depredation of urban monuments. Urban decay and difficulties in dealing with it were key problems addressed by the lawgivers, but they were not the only issues that shaped late Roman architectural and urbanistic legislation. Closer attention to the language of the Theodosian Code sharpens our understanding of the *civic* role contemplated by the imperial authorities for public buildings in a decorously maintained urban context. Most important of all, certain laws demonstrate that a city could not legally be deprived of what the Code collectively designates “civic ornament” (“ornatus”), that is, public monuments. Buildings and their decoration, the inalienable components of the city’s image, had to be preserved. But preservation often required adaptation to new public purposes and contexts: in short, reuse.

Many conditions make the late fourth and early fifth centuries, the period at the end of which the Theodosian Code was compiled, a likely moment for envisioning the first large-scale adaptation of old buildings and materials. Late fourth-century civil disturbances and the attacks of barbarian armies had inflicted considerable damage on urban monuments.⁸ In the same period, pagan-Christian antipathy seems at times to have taken a violent turn, much to the disadvantage of pagan religious buildings.⁹ Nevertheless, the beginnings of extensive reuse and the legislation related to it precede this period of crisis by about a century. To cite the case of the city of Rome, we have impressive examples of *spolia* in a sequence of well-known monuments that extends backward in time from the 380s to the late third and early fourth century: the basilica of San Paolo fuori le mura, begun in the 380s, stands at the end of this series of imperial foundations, while the elegant funerary rotunda of Constantine’s daughter Constantina was built three or four decades earlier. The careful selection and arrangement of reused columns and other architectural members have often been observed, both in the basilica and in the round tomb.¹⁰ The great congregational and shrine basilicas funded earlier by Constantine himself featured similarly recycled structural members and carved decoration. The sixteenth-century architectural surveys of the nave colonnades of Old St. Peter’s, and the mid-seventeenth-century fresco “reconstruction” of the nave of St. John in Lateran, give an impression of the lavish array of *spolia* that characterized this emperor’s donations to

⁸Lanciani’s analysis of the transformation of the city from antiquity through the late nineteenth century still provides the best survey of the ancient documentary evidence for this destruction: R. Lanciani, *The Destruction of Ancient Rome* (London, 1899), hereafter cited as Lanciani, *Destruction*. Ancient authors surely exaggerated the damage to Roman monuments caused by fires set during barbarian sacks.

⁹Some sources for anti-pagan legislation and the repression of pagan cult by Christians were collected and analyzed by J. Geffcken, *The Last Days of Greco-Roman Paganism*, translated and given additional notes by S. MacCormack (Amsterdam, 1978), 121–24, 223–40. Saradi-Mendelovici’s recent study offers a useful, updated overview of anti-pagan measures attested in fourth- and fifth-century sources: see H. Saradi-Mendelovici, “Christian Attitudes toward Pagan Monuments in Late Antiquity and Their Legacy in Later Byzantine Centuries,” *DOP* 44 (1990), 47–50, hereafter cited as Saradi-Mendelovici, “Pagan Monuments”.

¹⁰Deichmann’s views, recapitulated in his above-mentioned survey of 1975, were first expressed in “Saüle und Ordnung in der frühchristlichen Architektur,” *Roemische Mitteilungen* 55 (1940), 124. See also the evaluation of R. Krautheimer, S. Corbett, and A. K. Frazer, *Corpus Basilicarum Christianarum Romae*, V (Vatican City, 1975), 156, hereafter abbreviated as *CBCR*, V.

Roman Christians: the columns, capitals, bases, architraves, and doubtless the marble paneling as well, all stripped from older monuments and installed in these churches.¹¹

The architects who served Constantine's pagan predecessors had already developed a similar approach: for example, works like the so-called Temple of Romulus on the Sacra Via, begun by Constantine's adversary Maxentius, were decorated with architectural sculpture taken from older buildings.¹² A bit earlier, Diocletian's builders incorporated second- and third-century reliefs in triumphal arches that celebrated this emperor and his fellow tetrarchs.¹³

But the best-known Roman monument in which reuse can be observed is of course the triumphal arch dedicated to Constantine in 315, several years after his defeat of Maxentius. Much has been said about the purpose and provenance of the reused Trajanic, Hadrianic, and Aurelian reliefs incorporated in the arch: it is surely possible that pragmatic concerns and mere availability dictated the incorporation of *certain* reliefs and members.¹⁴ Before their installation here, certain building and decorative elements may have languished for some time, perhaps stockpiled after removal from their original high imperial contexts. But other carved panels and three-dimensional figures were taken from major civic complexes, such as the Forum of Trajan, that must still have been well maintained when the arch was completed.¹⁵ Whether certain components of the arch were chosen according to a program of imperial propaganda or simply because they were convenient or available, I believe that the presence of all recognizably reused elements was meant to evoke a positive, almost patriotic, response in the late antique urban audience. Such architectural recycling furnished a means of maintaining the luster of the late imperial city's heritage in the physical record of its dismantled and recomposed monuments.

Three hundred years ago, legal scholars recognized the relevance in this context of a few lines of the poet Prudentius, composed early in the fifth century at the end of a religious controversy that had first flared in the 380s.¹⁶ For two decades, Christians strug-

¹¹ *CBCR*, V, 232–39 (surveys of St. Peter's), 65, fig. 77 (view of Lateran nave).

¹² M. Cima, "La decorazione architettonica," in *Il cosiddetto tempio di Romolo nel Foro romano*, *Quaderni dell'Istituto di Storia dell'Architettura* 26 (1980), 103–20.

¹³ The Diocletianic restoration of the Forum Julii seems not surprisingly to have reused much material from the Forum of Julius itself and from the surrounding area. For the probably Diocletianic Arcus Novus and the Arco di Portogallo, see E. Nash, *Pictorial Dictionary of Ancient Rome*, I (New York, 1968), 83–87, 120–25.

¹⁴ Useful catalogues of the arch's reused components, with many suggestions regarding their original locations are in H. P. L'Orange and A. von Gerkan, *Der spätantike Bildschmuck des Konstantinsbogens* (Berlin, 1936); H. Kähler, *Römische Gebälke, II.1: Die Gebälke des Konstantinsbogens* (Heidelberg, 1953). See also the recent comments of P. Peirce, "The Arch of Constantine: Propaganda and Ideology in Late Roman Art," *Art History* 12 (1989), 387–418.

¹⁵ The evidence of a variety of late antique documentary sources, from Ammianus Marcellinus to the Codex Theodosianus, strongly suggests that Trajan's Forum, certainly the original location of the Trajanic *spolia* installed in second use on the arch, was kept up as a major urban showcase throughout the fourth century. S. B. Platner and T. Ashby (*A Topographical Dictionary of Ancient Rome* [London, 1929], 237–45) provide a convenient conspectus of the key literary loci and inscriptions.

¹⁶ J. Gothofredus, the great seventeenth-century editor and commentator of the Codex Theodosianus, first saw the relation of the passage in Prudentius to the legislation gathered in the Code. The version of Gothofredus' commentary most frequently cited today is J. D. Ritter's *editio nova*, published with additional comments in Leipzig between 1736 and 1745: *Codex Theodosianus cum perpetuis commentariis Jacobi Gothofredi . . . in VI tomos V* (Leipzig, 1741), hereafter cited as Gothofredus, *Cod. Theod.*

gled with a faction of Roman aristocrats that clung persistently to the pagan way of life. Speaking for the Christian cause, Prudentius addressed these words to Rome and her pagan leaders:

You should give up your childish festivals, your laughable rites,
your shrines unworthy of so great an empire.
Oh noble Romans, wash your marble statues wet with dripping spatters of gore—
let these statues, the works of great craftsmen, stand undefiled;
let them become the most beautiful adornments of our native city—may no
depraved purpose taint these works of art, no longer in the service of evil.¹⁷

Prudentius encouraged the continued appreciation of these pagan artifacts not just for their aesthetic value and not simply because they were “the works of great craftsmen” (“artificum magnorum opera”). They also deserved to be treasured because of the civic associations with which they were laden: as he put it, they were the “most beautiful adornments of our native city” (“nostrae ornamenta . . . patriae”). The poet suggested that for these statues to be made acceptable, they had to be purged of both the material and spiritual associations of pagan cult, cleansed of “dripping spatters of gore” (“tabenti respergine”) and viewed from a nonreligious perspective as works of art (“monumenta . . . artis”). Perhaps this new appreciation of temple decoration was facilitated by the display of certain sculptures in new surroundings, removed from the temples in which formerly they had been the objects of cult.¹⁸

Prudentius’ poetical exhortation to preserve and admire works of pagan sculpture is paralleled in an earlier official state document, an imperial constitution issued in 382. This law announced the decision to preserve a temple in an unnamed city of the Eastern Empire.¹⁹ The emperors resolved that the images of the gods should continue to be displayed in the temple, provided that they were considered in a new light: they were to

¹⁷Prudentius, *Contra Symmachum*, 1.499–505.

deponas iam festa velim puerilia, ritus
ridiculos tantoque indigna sacraria regno.
marmora tabenti respergine tincta lavate,
o proceres: liceat statuas consistere puras,
artificum magnorum opera: haec pulcherrima nostrae
ornamenta fiant patriae, nec decolor usus
in vitium versae monumenta coinquinet artis.

¹⁸Already late in Constantine’s lifetime, there was a special office in the Roman municipal administration headed by a functionary known as the *curator statuarum*. Among this official’s responsibilities was the upkeep of sculpture in public places; it is tempting to think that he also oversaw the transfer of statuary in reuse. Many bases that supported statues in second use have come to light in the excavation of public squares such as the Roman Forum, and of public entertainment complexes such as the great imperial baths. They provide some idea of the frequency of reuse, and of the kinds of locations in which recycled statuary was displayed. A. Chastagnol (*La Préfecture urbaine à Rome sous le bas-empire* [Paris, 1960], 33–42) discussed some of the epigraphic testimony for this office and for the practice of reusing statues. Lanciani (*Destruction*, 35–36) and Ward-Perkins (*Classical Antiquity*, 43–44) both refer to these lines of Prudentius, but their comments show little concern for the content of the passage and focus instead on the archaeological, particularly the epigraphical, evidence for reused statues in the city of Rome. Prudentius’ recommendation regarding temple legislation against the performance of pagan ritual (*CTh.* 16.10.18,19). These laws stipulated the removal and destruction of statues which continued to receive attention from the practitioners of pagan cult.

¹⁹*CTh* 16.10.8, addressed by the emperors Gratian, Valentinian, and Theodosius to Palladius, *dux* of Osrhoene. Gothofredus (*Cod. Theod.* 6, 310) proposed that Edessa was the city for which the law was issued.

be “appreciated not for their divinity, but for their artistic value.”²⁰ Civic concerns were at the heart of this enactment. Since the building had long been a place where people could congregate, the emperors determined that it should continue to serve the “common use of the people.”²¹ Unfortunately, we do not know precisely what kind of “common use” the lawgivers had in mind—whether for social, political, or commercial gatherings. Some clue may come from another provision of this law, where it is stipulated that while *pagan sacrifice* was prohibited, the city was encouraged to continue to sponsor the *nonreligious events* that had in earlier centuries accompanied sacrifices to the pagan gods. In effect, the legislation prescribes the separation of pagan religious functions from the building constructed originally to house such functions. Already in the reign of Constantine a comparable separation had existed. The emperor permitted the residents of the Umbrian town of Hispellum to honor him and his family with games, spectacles, and the dedication of a temple, “provided that the temple dedicated to our name not be tainted by deceptions of any contagious superstition”; that is, no sacrifice could be performed in it.²²

Economic as well as social considerations must have prompted the decision of 382. The festivities mentioned in the law presumably attracted crowds of visitors, whose presence (and spending power) surely benefited the city. In any case, appreciation of the city’s past, pride in the present state of its monuments, and concern for the local economy are threads tightly interwoven in this fourth-century legislation. It is possible that pure pragmatism, the desire to exploit a sound structure, may have contributed to the imperial policy expressed in the resolution, but the proclamation itself focuses exclusively on the historical considerations, and on the civic cohesiveness that results from maintaining old local traditions. The building was judged worthy of preservation because it was the repository of these traditions.²³

A law of 389 hints at the broader aims of the imperial enactments on buildings collected in the Theodosian Code.²⁴ While it does not deal specifically with *spolia*, this law encapsulates the urbanistic ideals at the heart of most legislation on public buildings. It states that public monuments, or translated more literally from the Latin, the “ornament of public splendor” (“*publici splendoris ornatum*”), should not be ruined by private buildings attached to them. These public buildings deserve the attention and the protection of the municipal authorities, since they constitute the “*urbis decus*”—both “civic

²⁰“... simulacra . . . artis pretio quam divinitate metienda. . . .” Saradi-Mendelovici (“Pagan Monuments,” 50–53) commented on certain legislation and other historical sources relevant to monuments and cities in the East. Her interest focused on the attitude of Christian lawgivers and church leaders toward temples and other places of pagan cult.

²¹“Aedem olim frequentiae dedicatam coetui et iam populo quoque communem. . . .” This represents an early case of a practice attested more often in the Middle Ages: the integral adaptation of a temple building to new functions. The conclusions of F. W. Deichmann (“Frühchristliche Kirchen in antiken Heiligtümern,” *JDAI* 54 [1939], 105–36) need revision in the light of the half-century of archaeological discovery that has occurred since his pioneering study appeared.

²²*CIL* XI, 5265: “. . . ne ae/dis nostro nomini dedicata cuiusquam con/tagios(a)e superstitionis fraudibus polluat.”

²³A constitution emitted in 342 for the city of Rome (*CTh* 16.10.3) made analogous provisions for the maintenance of certain extramural temples on account of their links with traditional “plays, spectacles of the circus, or contests” (“*vel ludorum vel circensium vel agonum origo*”).

²⁴*CTh* 15.1.25 (issued in 389).

glory” and “civic adornment.” And a prime impulse behind this piece of legislation was aesthetic. It categorically denounced such architectural “parasites,” annexes attached illegally to civic monuments, but demolition was ordered *only* if the illicit addition detracted from the appearance of the public building.²⁵

Other laws encouraged the restoration of old public buildings. Concern for urban decorum moved the legislators in 364 to give their approval to patrons willing to renovate the old and dilapidated monuments whose “ugly ruins” (“*deformibus ruinis*”) marred the cityscape.²⁶ Another constitution of 365 gave “full and gracious permission to those (scil. officials) . . . to restore to their pristine appearance and to an appropriate and useful function public monuments (“*ornamenta urbium*,” literally “the ornaments of the cities”) and their marble adornments, if they are suffering the decaying effects of time in any way.”²⁷ The main goal of this legislation was to limit the useless new construction that sapped the resources of cities, and caused administrators to “fail to repair old and illustrious buildings” (“*veterum inlustrium fabricarum reparatione neglecta*”) visibly affected by time and neglect.

Certain cases of new construction worked more actively to the disadvantage of old buildings. Venerable monuments, if damaged by disaster or by time, were dismantled so that their components could be reused. A law of 365 serves to illustrate this pattern in the variant in which it was permitted by the central authorities: in this instance, the governor of the Italian province of Picenum was advised to restore old works rather than begin new ones.²⁸ Towns under his jurisdiction were permitted to seek imperial assistance for new construction, but the imperial lawgivers warned that their contributions would take the form of building materials, not of funds. It is quite unlikely that the building supplies referred to here were bricks or roof-tiles fresh from the kiln, or newly quarried columns and paving stones. The materials offered by the central government in large part must have been recycled from old public constructions, which had deteriorated to a state so precarious that, for the sake of public safety, they had to be razed.

A later law, however, condemned demolition practiced for the wrong reasons by the wrong parties.²⁹ Read before the Roman Senate, this law again imposed a ban on new construction in the city of Rome, and prescribed that if a patron insisted on ignoring the prohibition, labor and supplies had to be secured at his own expense—materials could not be collected from demolished public buildings. The legislators eloquently characterized the kind of behavior they wished to stop when they specified that construction had to be completed “. . . without assembling the parts of old monuments, without digging up the underpinnings of famous buildings, without obtaining stone salvaged from public

²⁵ Janvier, *Législation*, 364–65. See also Saradi-Mendelovici (“Pagan Monuments,” 52) for references to several fourth-century authors who stress the civic associations of pagan temples and statuary.

²⁶ *CTh* 15.1.11 (addressed in 364 to Symmachus, Rome’s urban prefect).

²⁷ *CTh* 15.1.16 (sent in 365 to the praetorian prefect Mamertinus): “In eo sane larga ac benigna his licentia tribuetur, ut ornamenta urbium ac decora marmorum, quae in aliquo senium temporis sentiunt, ad speciem pristinam et usum congruae utilitatis instaurent.” Cf. Roman statue bases like *CIL*, VI.1197, where the expression “*squalore summoto*” indicates aesthetic and urbanistic improvement.

²⁸ *CTh* 15.1.17.

²⁹ *CTh* 15.1.19 (issued in 376).

property, and without tearing away scraps of marble in the mutilation of stripped buildings.”³⁰

Legislation of the last years of the fourth century often confronted the problem of illegal demolition. In 398, the emperors Arcadius and Honorius first repeated the ban on new public building to Theodore, the prefect of the west, and then they expressly forbade that monuments be stripped of their “bronze or marbles or whatever other decoration that can be shown to have been of use or an ornament to a city.”³¹ Spoliation was allowed only with Theodore’s explicit approval. Anyone caught pilfering was fined three pounds of gold, and a similar penalty was imposed on town councilors, if by permitting unwarranted spoliation they failed to safeguard the “decoration of their native city” (“ornamentum genitalis patriae”). Decoration and structural members could not be removed from public buildings, as long as the buildings were still in servicable condition and constituted an adornment to the city.

Other laws sought to protect conspicuous urban monuments, even pagan temples, from destruction through neglect or vandalism. Several proclamations of 399 which outlawed pagan sacrifice took care at the same time to warn that no action should be taken against the “ornaments of public works” (“publicorum operum ornamenta”)—in this context, the phrase must refer to the precious sculptural decoration of pagan temples.³² Only cult statues and altars seem to have been declared illicit (“inlicitis”), and for this reason had to be removed. An edict addressed a decade later to the western praetorian prefect clarified the norms for the preservation of temples.³³ The images of gods still worshiped by pagans were condemned to destruction, while the temples themselves were purified of pagan cult and “turned over to public use” (“aedificia ipsa templorum . . . ad usum publicum vindicentur”), once their sacrificial altars had been destroyed. These laws emphasize the civic benefits of well-maintained buildings and their decoration: public monuments—even temples, once reclaimed from pagan use—would serve as a pole toward which civic pride could gravitate. Their structure and decoration had to be maintained, since they were the principal adornments of the city.

Another group of laws on public buildings sheds further light on the relation envisioned between towns and their ornaments, that is, their public buildings and decoration. This is the legislation addressed to officials in cities whose projects of urban renewal brought about the spoliation of other towns. In fact, Book 15 of the Theodosian Code, with its extensive section on public buildings, *begins* with an imperial proclamation on this subject. The placement of this law, dated 357, at the opening of the book does not conform to the straightforward chronological arrangement observed elsewhere in the Code. This first constitution, issued by Constantius, is followed by three emitted in the 320s under Constantius’ father, Constantine. Could the fifth-century compilers have wanted to stress the importance of this proclamation by setting it prominently at the

³⁰“ . . . non contractis veteribus emolumentis (Gothofredus suggested ‘monumentis’), non effossis nobilium operum substructionibus, non redivivis de publico saxis, non marmorum frustis spoliatarum aedium deformatione convulsis.”

³¹*CTh* 15.1.37: “aeramen aut marmora vel quamlibet speciem, quam fuisse in usu vel ornatu probabitur civitatis.”

³²*CTh* 16.10.15, 18.

³³*CTh* 16.10.19.

head of the book? Whatever the explanation for its position, the pronouncement of 357 states that:

No one should think that cities may be deprived of their own ornaments, since indeed it was not considered right by the ancients that a city should lose its glorious adornments, and that they should be transferred to the buildings of another city.³⁴

Similar concerns stand behind a law of 365 addressed to Mamertinus, the highest official in the Western Empire. In this case, the imperial lawgivers Valentinian and Valens speak in the first person:

We further proscribe the boldness of provincial magistrates who, to the destruction of obscure towns, pretend that they are adorning metropolitan or other most splendid cities, and for this reason seek statues, marbles, or columns in order to transfer them. It shall not be permitted to commit such deeds with impunity after the enactment of our law, especially since we have ordered that no new structures should be begun before the old ones are restored. And if indeed any work should be begun, other cities must be spared.³⁵

Here the authorities hoped to prevent two kinds of abuse that blighted the appearance of cities. First, the legislation implies the extension of the order to stop dismantling buildings for the sake of their valuable statues, marble reliefs, or columns. The specific aim of both laws, however, was to put an end to the removal of materials from buildings in one town for reinstallation in another. All elements of urban monuments—statuary, relief and other stone or metal decoration, and even stone structural members—had to be protected: stripping them from buildings resulted in the physical degradation of the city, and carting them off to other towns demolished civic pride.

It is not surprising that late imperial rulers legislated to prohibit demolition and acted in favor of maintaining the integrity and appearance of *public* monuments in the cities and towns of the Empire; more striking are the laws that stipulate the ways in which *private* buildings could be disposed of, and their components reused. The late imperial codes contain a body of legal documents not considered by scholars who have dealt with *spolia* and public buildings, because these laws treat only the demolition of private houses. Certain principles invoked in the laws, however, conform to patterns observed in the legislation on public works. It seems clear that a consistent aim operates in both categories of laws: the intent to limit the mobility of reused building materials, and to bind the marble decoration or stone columns, even if they come from private contexts, to the city in which they were first used. Although these laws are preserved in fifth- and sixth-century codes, their legal precedents are attested in the last century of the Republic, and they may have originated even earlier. The republican and early imperial laws were enacted mainly to limit speculation in real estate and in materials salvaged from dismantled

³⁴*CTh* 15.1.1: “Nemo propriis ornamentis esse privandas existimet civitates: fas si quidem non est acceptum a veteribus decus perdere civitatem veluti ad urbis alterius moenia transferendum.”

³⁵*CTh* 15.1.14: “Praesumptionem iudicum ulterius prohibemus, qui in eversionem abditorum oppidorum metropoles vel splendidissimas civitates ornare se fingunt transferendorum signorum vel marmorum vel columnarum materiam requirentes. Quod post legem nostram sine poena admittere non licebit, praesertim cum neque novam constitui fabricam iusserimus, antiquam vetera reformentur, et, si adeo aliquid fuerit inchoandum, ab aliis civitatibus conveniat temperari.”

structures; they were motivated by the concern to maintain certain standards in commercial ethics, and to a lesser degree, a decorous urban environment.³⁶

The legislation foresaw three cases in which construction materials taken from a private building might be transferred from one site to another; in all three cases, the materials originally decorated a house in a city, or in the juridically defined territory of that city. Imperial approval was routinely granted to the owner who took decorative elements ("ornatus") from his own house and donated them for the construction or beautification of a *public building* in the same city or its territory. Another class of transfer not opposed by the legislators involved material removed from a house in one city to a *house* in another city—this was allowed, provided that both houses belonged to the same person. Only one kind of transfer was forbidden: when the owner of the house attempted to donate material taken from a house in *one* city for the construction of a public building in *another*. Even if this decoration were tucked away in the garden or courtyard of a private dwelling far from the public eye, it could not be alienated from the city where it was first used, at least not for the purpose of improving the appearance of another city.³⁷

It is instructive to evaluate the fourth- and fifth-century legislation on the preservation of public buildings against this backdrop of contemporary and earlier laws regulating the disposal of private property. For the first three centuries of the Empire, we know nothing of comparable measures taken to protect public monuments. The appearance of this flurry of late antique laws surely provides an index of the changing conditions of urban life. As many scholars have pointed out, Majorian's fourth Novel, an imperial ordinance on public building addressed in 458 to Rome's city government, responded at length to these conditions.³⁸ This proclamation of the emperor Majorian can be read simply as a sanction of reuse necessitated by the pitiable state of disrepair into which Rome had declined. But this interpretation fails to give due emphasis to several key

³⁶A few scholars have discussed some of this material, but not in connection with late antique legislation on public building: see E. J. Phillips, "The Roman Law on the Demolition of Buildings," *Latomus* 32 (1973), 86–95, and P. Garnsey, "Urban Property Investment, Appendix: Demolition of Houses and the Law," in *Studies in Roman Property*, ed. M. I. Finley (Cambridge, 1976), 133–36. The comments furnished above are the summary of several long and complex laws and opinions collected in the Codex Justinianus and Justinian's Digest. Some of the most important texts are *CI* 8.10.2, 3, 6, 7, 8, and *Dig* 30.41, 39.2.48. *Dig* 30.41, an opinion of the third-century jurist Ulpian, provides a reasonably complete exposition of the concerns addressed by this legislation; for this reason, *Dig* 30.41.5, 6 is cited *in extenso*. At issue here is the validity of legacies that involve building material or decoration already transferred (or whose transfer is stipulated in the will) from one house to another. Ulpian invoked a *senatusconsultum* and imperial *constitutiones* regarding private transfer, and most important, the opinion of Papinian on an early third-century law that regulated transfer from private to public contexts in Rome and other cities ("alias civitates").

Dig 30.41.5.6: "Sed si quis ad opus rei publicae faciendum legavit, puto valere legatum: nam et Papinianus libro undecimo responsorum refert imperatorem nostrum et divum Severum constituisse eos, qui rei publicae ad opus promiserint, posse detrahare ex aedibus suis urbanis atque rusticis et id ad opus uti, quia hi quoque non promercii causa id haberent. sed videamus, utrum ei soli civitati legari possit, in cuius territorio est, an et de alia civitate in aliam transferre possit. et puto non esse permittendum, quamquam constitutum sit, ut de domo, quam aliquis habet, ei permittatur in domum alterius civitatis transferre. Hoc senatus consultum non tantum ad urbem, sed et alias civitates pertinet."

³⁷The desire to limit speculation in salvaged materials was not a primary concern of this legislation, as demonstrated by the repeated use by the lawgivers of verbs such as "transferre": decorative elements were handed over by their owners to the city in question.

³⁸Majorian, *Novel 4*, "De aedificiis publicis" (abbreviated hereafter as *NMaj 4*), in *Leges novellae ad Theodosianum pertinentes*, ed. P. Meyer with the assistance of T. Mommsen (Berlin, 1905), 161.

articles and intentions of the law. In some respects, Majorian's enactment follows the scheme set by legislation over the course of the preceding century and a half; several features, however, reflect concerns for new developments that were a cause of great damage to the city's spirit as well as to its fabric.

The emperor first criticized harshly the involvement of the urban prefecture in the unnecessary destruction of great and ancient public monuments. Majorian wished to broaden the protection decreed by the fourth-century rulers discussed above. These emperors had attempted to stop city officials whose architectural ambitions induced them to undertake construction campaigns that resulted in the demolition and reuse of old, but sound and serviceable, public buildings.³⁹ Majorian lamented that:

Under the pretense that the materials are needed for public works, the beautiful structures of ancient monuments are being made to disintegrate, and great things are being pulled down in order that something small be repaired.⁴⁰

But the greatest contempt was reserved for those who stripped civic buildings of their structural members and decoration for *private* reuse. The prohibition against looting materials for installation in domestic and other private constructions is clearly distinct from earlier legislation, which had been directed against overly ambitious public building campaigns.⁴¹ Majorian decried this illegal activity of private builders, which he claimed was a recent development,⁴² and denounced them for the level to which their civic sentiments had fallen. They were reminded that "everything related to the splendor of cities, even if it is in need of restoration, ought to be preserved by one's attachment to the city" ("adfectione civica").⁴³ The demolition of public buildings and the transfer of pilfered materials already accomplished or under way were ordered stopped, and damage had to be repaired with the material illegally removed from the building.

In the final paragraph of the law, the emperor turned to the matter of legitimate reuse: if new public construction was judged sufficiently urgent, or if an old public building was declared beyond repair, the Roman Senate might move that a monument be razed. In order to reduce the possibility of collusion between the Senate and the architectural patrons, most of whom were of senatorial rank, Majorian required the Senate to submit its decision to imperial review. If the imperial authorities agreed that the building could not be restored, permission to dismantle it was granted, on the condition that its decoration was transferred to *another* public building.⁴⁴ Decorative and structural materials could not be appropriated for private use. The emperor insisted instead that they be removed for reinstallation in public contexts, accessible to the residents of the city.

Even in the confused political and military conditions of the mid-fifth century, impe-

³⁹See above for a discussion of certain late fourth-century constitutions such as *CTh* 15.1.19 and 37.

⁴⁰*NMaj* 4.1: "Dum necessaria publico operi saxa finguntur, antiquarum aedium dissipatur speciosa constructio et ut parvum aliquid reparetur, magna diruuntur."

⁴¹Janvier (*Législation*, 340–41) also observed Majorian's distinction between private and public despoliation, but emphasized that the emperor's displeasure was directed primarily at delinquent public officials.

⁴²*NMaj* 4.1: "Hinc iam occasio nascitur. . . ."

⁴³The phrase "everything related to the splendor of cities" ("haec quae ad splendorem urbium pertinent"), equivalent to expressions like "urbis decus," refers to the material glories of the city, its public buildings and their decoration.

⁴⁴*NMaj* 4.4: ". . . quod reparari nullo modo viderimus posse, in alterius operis nihilominus publici transferri iubeamus ornatum. . . ."

rial concern to limit the stripping of public building persisted and is reflected in the legislation.⁴⁵ Majorian's ruling, echoing and building on the proclamations of his fourth-century predecessors, gave only hesitant and limited approval to the spoliation of Roman monuments. The pragmatic desire to take advantage of materials on hand contributed to the emperor's decision, but this and earlier imperial laws on reuse and demolition were dictated as well by the desire to synthesize what older monuments had to offer and to present to the urban public a selection of *spolia*, the tangible emblems of centuries of civic splendor. The Novel of 458 recapitulated the key elements of almost a century and a half of reform and legislation regarding the demolition of public buildings. This body of laws, which began with prohibitions intended to safeguard the public elegance ("urbis decus") of Roman municipalities, elaborated a program in which the decoration and structural members of public monuments were preserved through the centuries by transfer to other buildings. Legislation that called for the installation in new contexts of prized, often recognizably reused, architectural and sculptural elements sought to maintain the traditional appearance of the *civitas* and to stimulate positive reactions of civic solidarity among the residents of late imperial municipalities. *Spolia* and spoliation, however, the terms most often used today to designate ancient architectural salvage and reuse, are words laden with negative connotations. We might substitute "recycling," with the understanding that this activity as envisioned by late antique rulers was meant to conserve both the tangible components of urban monuments and at the same time civic pride, a much less durable, nonrenewable resource.

University of Minnesota

⁴⁵Similar interests were displayed by later rulers of Italy as well, in particular the Ostrogothic king Theoderic; see most recently C. La Rocca, "Public Buildings and Urban Change in Northern Italy in the Early Mediaeval Period," in *The City in Late Antiquity*, ed. J. Rich (London and New York, 1992), 161–80, esp. 165–66. Ward-Perkins, *Classical Antiquity*, 204, 207–8, 212–13, also briefly discusses the initiatives of Theoderic in Rome and elsewhere in central Italy.